

III. REMARKS

It is submitted that claims 2-14, 16-25, 30 and 33-44 are not unpatentable over Kaydyk in view of either Ginten or Wantanabe under 35 U.S.C. § 103(a).

A *prima facie* case of obviousness under 35 U.S.C. § 103(a) requires that references, when combined, teach or suggest all of the claim limitations. This is not the case here.

Claim 35 recites, in pertinent part, that the content packet includes a "data structure" that includes:

at least information related to a description of the at least one content component and information needed by the wireless device to run the at least one content component.

There is no such disclosure or suggestion in the combination of Kaydyk with either Ginten or Wantanabe. The examiner's analysis seems to ignore the specific features that are recited in Applicant's claim. It is broadly stated that the data structure recited by Applicant reads on all complex headers in a wireless environment, without any substantiation or support as to why the data structure of Kaydyk and Ginten or Wantanabe would include the features, explicitly recited in Applicant's claims

In Kaydyk, a data structure 220 includes one or more tags 222, a sequence number 224, error detection (or secondary information 226) and message body or payload information 228. "The message body 228 is simply the original message which is to be transmitted to mobile device 18. Error checking information 226... is provided as a way to determine if the particular message being sent has errors. Message sequence number 224 is used to identify two corresponding instances of messages. Tag information 222 is preferably simply a tag identifying the page as using the error correction system in accordance with the present invention...This information simply indicates that the wireless carrier 14 will be sending two instance of the same message." (Col. 9, line 59-col. 10, line 55).

As the Examiner notes, Kaydyk does not disclose or suggest the "use of explicit data structure definition." It is submitted that neither Ginten nor Wantanabe can be used to overcome this deficiency.

Ginten merely illustrates certain types of headers. (Public header 802, private header 804) and container content. Col. 284, lines 15-40 of Ginten only discloses the creation of IDE objects 300, which can include placing "meta data" into them. An "administrative object" can contain one or more "permission records 808, other control structures, and or load modules." (Col. 284, lines 37-39). There is no disclosure here or elsewhere in Ginten that a data structure includes at least information related to a description of the at least one content component and information needed by the wireless device to run the at least one content component. Combining Kaydyk with Ginten would at most result in a data structure 220 that includes "content" (information content 304, budgets 308 and permissions and public (802) and private header (804).

Thus, the combination of Kaydyk with Ginten fails to disclose or suggest each and every feature recited by Applicant in the claims, which is required to establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a).

Combining Kaydyk with Wantanabe is equally insufficient to establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a). Wantanabe in FIGS. 5-7 and 11-12 merely illustrates different types of transmission frames. These transmission frames of Wantanabe can include a preamble, frame header, frame payload, and payload, for example. While some other content are shown, that can be included in these headers, there is no disclosure or suggestion that these transmission frames will include at least information related to a description of the at least one content component and information needed by the wireless device to run the at least one content component, as claimed by Applicant. If it would be proper to combine Wantanabe with Kaydyk, which Applicant submits it is not, the combination of Kaydyk and Wantanabe might provide a data structure 220 that includes a "preamble, a frame header part, a frame header part error correction code, a frame payload part and a frame payload part error

correction code." However, this is not the same as and does not disclose what is claimed by Applicant. Thus, since the combination of Kaydyk and Wantanabe does not disclose or suggest each feature of Applicant's claim, a *prima facie* case of obviousness cannot be established.

It is also submitted that the requisite suggestion or motivation to modify the references as proposed by the Examiner is lacking. The references themselves and/or the knowledge generally available to one of skill in the art does not provide the requisite motivation or suggestion to modify the references as proposed for purposes of 35 U.S.C. § 103(a). When "the PTO asserts that there is an explicit or implicit teaching or suggestion in the prior art, it must indicate where such a teaching or suggestion appears in the reference." In re Rijckaert, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993). The Examiner states that it would be obvious to provide a similar arrangement for Kaydyk because packet headers are conventional functional equivalents of the claim limitations. However, the Examiner has not provided any indication as to where any teaching, suggestion or motivation can be found that discloses or suggests forming a content packet that includes a "data structure" that includes at least information related to a description of the at least one content component and information needed by the wireless device to run the at least one content component. Obviousness requires that the combination of references must teach all of claim limitations appears in the references. Absent such a teaching, it is submitted that a *prima facie* case of obviousness under 35 U.S.C. § 103(a) is not established.

The Examiner cites to In re Scheckler, 168 USPQ 716 for the notion that the reference need not suggest, expressly or in so many words, the changes or possible improvements the applicant has made. However, the use of this citation here overlooks the fact that each of the claim element must still be taught by the combination of references. In In re Scheckler, all of the claim elements could be found in the combination of references. The references made it obvious to "put together foam and concrete, in a composite building block, in the way taught by rejected claim 5." In re Scheckler,@717. Thus, it is clear that in Scheckler, each claim limitation was taught by

the references. This is not the case here, because the references fail to disclose a data structure that includes at least information related to a description of the at least one content component and information needed by the wireless device to run the at least one content component.

Although a reference might be evaluated for all that it fairly suggests, the claimed limitations must still be suggested. In re Bozek, 163 USPQ @ 545. It is essential that it be established "that this knowledge was in the art" before the Examiner can rely on common knowledge. In re Bozek, 163 USPQ @ 549. The Examiner is requested to provide an evidentiary basis to establish that a data structure that includes at least information related to a description of the at least one content component and information needed by the wireless device to run the at least one content component is known in the art. Although the Examiner cites to In re McLaughlin, 170 USPQ 209 as well, in that case, the references disclosed that it was known to use "panels and bulkheads to confine palletized loads." Thus, each element as claimed was found in the references. While the Examiner states that a data structure is a complex header including metadata included in all packets, the Examiner has not been able to point to any reference or combination thereof that identifies a data structure as including at least information related to a description of the at least one content component and information needed by the wireless device to run the at least one content component. Thus, the claim is not obvious.

The remaining claims are equally not unpatentable by reason of their similar claim limitations or dependencies.

For all of the foregoing reasons, it is respectfully submitted that all of the claims now present in the application are clearly novel and patentable over the prior art of record, and are in proper form for allowance. Accordingly, favorable reconsideration and allowance is respectfully requested. Should any unresolved issues remain, the Examiner is invited to call Applicants' attorney at the telephone number indicated below.

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The Commissioner is hereby authorized to charge payment for a three-month extension of time and any other fees associated with this communication or credit any overpayment to Deposit Account No. 16-1350.

Respectfully submitted,

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